WAR FOOD ADMINISTRATION
Office of Marketing Services
Washington 25, D. C.

OMS REGULATORY WORK

By C. W. Kitchen, Director

(Excerpt from the March 1945 issue of MARKETING ACTIVITIES, page 3, a monthly publication of the War Food Administration.)

The Office of Marketing Services administers some 25 separate laws related to the marketing of farm commodities. Federal legislation on this subject began about 1914; before that time marketing had been regarded largely as a local problem, with some regulation and assistance by States and municipalities. The rapid development of transportation, refrigeration, and large-scale production, especially of the more perishable commodities, had forced producers to seek markets farther and farther from home.

Widespread confusion had developed in the use of terms for describing the quality and condition of farm commodities. Various State and trade standards had been established for some commodities, but they were not uniform and consequently were not adapted to long-distance transactions and to distribution on a national and international scale. Various forms of abuses and unfair practices had arisen. The farmer badly needed a way of knowing the probable value of the commodities he had produced. Congress considered the marketing of farm commodities in interstate and foreign commerce as a proper subject for Federal legislation.

Standardization and Inspection Laws

Many of the statutes administered by the OMS are the so-called standardization and inspection laws. They provide for establishing official standards of description, and authorize official inspection and certification under certain conditions. The first to be passed was the Cotton Futures Act. Briefly, this act requires the levy of a tax of 2 cents a pound for the cotton involved in each contract for future delivery made on any exchange, board of trade, or similar institution unless the contract conforms to the act and the rules and regulations of the Secretary of Agriculture[1] for its administration. The tax need not be paid when, among other things, the cotton delivered in settlement of futures contracts conforms to the official standards as promulgated by the Secretary, and when it has been classed and certificated by officers of the Government.

[1] At present the War Food Administrator performs such functions of the Secretary of Agriculture as are referred to in this article.

The act also limits the qualities of cotton that may be tendered in settlement of futures contracts, specifies certain provisions that shall be included in the contract, and requires settlement in accordance with premiums or discounts established in the manner prescribed, when cotton of other than the contract grade is delivered in settlement of the contract.

The authority to establish standards and require cotton classification under this act applied only to futures contracts, not spot transactions. So in 1923 the Cotton Standards Act was passed. It also provides authority to establish official standards, makes unlawful the describing of cotton by grade in any transaction in interstate or foreign commerce unless the description conforms to the official standards, and authorizes the Secretary to classify cotton upon request of any person who has a financial interest in the cotton and who may submit a sample for classification. The act does not prohibit sales on the basis of individual samples, nor does it require the official classification of all cotton sold in interstate or foreign commerce.

Grain Standards

The United States Grain Standards Act was passed in 1916. It authorizes the Secretary of Agriculture to establish official standards for grain and requires the use of official standards whenever grain is sold by grade. It does not prohibit the sale of grain by sample or by type, or under any name, description, or designation provided the designation is not false or misleading and does not include the terms of the official standards. Going further than the Cotton Standards Act, the Grain Standards Act requires the inspection of grain shipped, delivered, offered, or consigned for sale by grade by an inspector whom the Secretary has authorized to inspect grain, provided the grain moves from or to a place where an official inspector is located. Thus provision has been made for both permissive and mandatory official inspection. Grain inspection is mandatory under certain conditions, as is the inspection of cotton when it is delivered in settlement of futures contracts. Cotton not delivered on futures contracts may be officially classed or not, depending on the wishes of the buyer or seller. Official inspection of fruits and vegetables, dairy and poultry products, meats, and several other commodity groups is mostly on a permissive basis.

In the Tobacco Inspection Act of 1935, Congress dealt somewhat differently with official inspection. About 90 percent of the tobacco marketed by producers is sold at public auctions. Tobacco-grading requires a degree of skill most tobacco farmers do not possess. Consequently, tobacco growers were largely without information about the quality of the tobacco they offered for sale.

In the Tobacco Inspection Act, Congress did not require that all tobacco should be inspected before sale at auction but it left the decision to the growers. The act requires that before inspection

becomes mandatory on a particular market or group of markets, the Secretary of Agriculture shall hold a referendum to determine what the growers want in that regard. When two-thirds of the growers voting in a referendum favor inspection, the Secretary may issue an order designating that market (or those markets), and afterward no tobacco may be offered for sale thereon until the tobacco has been inspected and certified by authorized inspectors of the Secretary according to standards established by him under the act.

There is another group of laws whose purpose primarily is to prevent unfair practices. Notable in this group are the Packers and Stockyards Act, the Perishable Agricultural Commodities Act, the Insecticide Act, the Warehouse Act, the Federal Seed Act, the Naval Stores Act, the Produce Agency Act, and some others.

The Packers and Stockyards Act, so far as packers are concerned, is a trade-practice law that makes it unlawful for any meat packer to engage in or use any unfair, unjustly discriminatory, or deceptive practice in interstate commerce. The stockyards part of the act provides that each stockyard of more than 20,000 square feet in size shall be posted by the Secretary of Agriculture. After the posting, commission men and dealers operating at the stockyard must register with the Secretary, setting forth the character of the business in which they are engaged and the kind of services they are in position to furnish. All rates or charges for stockyard services by such persons must be just, reasonable, and nondiscriminatory. If the Secretary considers any tariff filed by a stockyard company or a livestock commission man to be unreasonable, he may issue an order of suspension and investigate the reasonableness of the rate. Following investigation and a hearing, the Secretary may establish reasonable rates. Another feature of this act is the investigation of producers' complaints involving such matters as false weighing and incorrect application of tariffs.

P.A.C.A.

The Perishable Agricultural Commodities Act makes it unlawful for any commission merchant, dealer, or broker to handle fresh fruit or fresh vegetables, whether or not frozen or packed in ice and including cherries in brine, in interstate or foreign commerce without a license from the Secretary, and provides for proceedings to determine the fitness of an applicant to engage in business and for denial of license if he is found unfit. It also provides for injunction proceedings to stop the operations of a person engaged in business without a valid license.

The United States Warehouse Act, which provides for the licensing and bonding of public warehouses engaged in storing certain agricultural commodities, was created for the primary purpose of providing a system of safe storage of farm products, with a warehouse receipt which would be widely accepted as collateral for loans to be used in marketing. Licensing under the act is optional

with a warehouseman, but after he has elected to become licensed he is subject to severe penalties for violation of the act and regulations. Before a license is granted, the warehouseman must have sufficient financial assets, obtain a sufficient bond, and his warehouse must be suitable for storing the commodities to be handled.

The Federal Seed Act requires the labeling of agricultural and vegetable seeds when shipped in interstate commerce. Agricultural seed is required to comply with the law with respect to noxious weed seeds of the State into which the seed is shipped and must also be labeled to show the kind of seed, percentage of weed seed, and the germination. Vegetable seeds are required to be labeled as to variety and must comply with the standard of germination established in the regulations or be labeled with the words "below standard." The act also prohibits false advertising. Importations of seed are required to meet a standard of quality determined by the percentage of pure seed, germination, and the freedom from weed seed. Imported alfalfa and red clover seed are required to be stained to show whether they are generally adapted in the United States.

Marketing Agreements

The foregoing statutes for the most part concern marketing services that can be more uniformly and authoritatively conducted by an official agency than in any other way and that provide protection against unfair practices. The Agricultural Marketing Agreements Act of 1937, which represents a third type of marketing legislation, deals somewhat more specifically with marketing problems from the standpoint of income to producers. The declaration of policy in that act states: " . . . the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce."

The declaration of policy goes on to state that it is the purpose of Congress "to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period." While the word "parity" is not in the act, the reference to the equivalence of purchasing power in a base period refers to the parity concept, although the act is not limited to parity in the case of milk.

The act permits marketing agreements with processors, producers, associations of producers, and others who handle any agricultural commodity or its products. The making of such agreements is declared to be no violation of the United States anti-trust laws, and contracting parties are eligible for Reconstruction Finance Corporation loans.

A marketing agreement may result from the voluntary action of producers and handlers, in which case all who sign are bound by its terms, but instruments such as this are rarely concluded. To effectuate the purposes of the statute, therefore, provision is made for making agreements mandatory under certain conditions. For example, when two-thirds of the producers handling two-thirds of the volume and handlers of not less than 50 percent of the volume by referendum favor an agreement, the Secretary issues an order setting it up. However, if handlers of more than 50 percent refuse to concur, the Secretary of Agriculture, with the approval of the President, may issue an order making the agreement mandatory upon all. An exception is citrus fruit in California, in which case approval for 80 percent of the volume and 75 percent of the producers is required.

Thus far, the act has been used chiefly by producers of fresh fruits and vegetables, and milk. Most of the fresh fruits and vegetable agreements and orders have been based upon the limitation of shipments to specified grades or sizes. A few have been set up on a volume control basis, but the mechanics of straight volume control have been found very difficult for perishable commodities. The primary objective of agreements on fluid milk is to establish a minimum price to producers.

Control Committees

Persons subject to a marketing agreement participate in its administration through the establishment of so-called control committees. This procedure is followed for fruits and vegetables. The law limits their powers to (1) administering the order in accordance with its terms and provisions, (2) making rules and regulations to effectuate the terms and provisions of the order, (3) receiving, investigating, and reporting to the Secretary of Agriculture complaints of order violations, and (4) recommending order amendments to the Secretary.

All these marketing statutes mentioned arose from the desire of certain groups for Government assistance. The objective was to provide services and "rules of the game," things which experience had demonstrated could be provided most effectively by Government. The policy underlying the administration of these laws has been developed on the premise of service, to prevent violations by explanation, information, and warning, and to invoke penalties only upon the recalcitrant few. A law can be of greatest service when those who must live with it and abide by it have had an opportunity to assist in its development in the legislative stages; an even larger opportunity and voice in the formulation of the regulations to be used by the administrative agency; and a full and fair opportunity to present their side of a dispute in any administrative proceeding and when administrative decisions are reviewable by the courts.

The principles and general outlines of many of these statutes were discussed by different elements of the industries affected and

by administrative officials before hearings were held by committees in Congress. In the formulation of regulations it has been the policy to provide an opportunity for interested persons to offer suggestions and comments before the regulations or important amendments to them are promulgated. Of the laws mentioned, only the Federal Seed Act requires a public hearing before regulations and amendments are issued. The general practice is to draft proposed regulations and send copies to farm groups, trade associations, trade newspapers and journals, and persons and firms on departmental mailing lists, at which time comments, criticisms, and suggestions for changes are invited.

In most instances, if the proposed regulations are new or are important amendments to existing regulations, arrangements are also made for hearings to be held at from two to six or eight places reasonably convenient to most of the people interested. These meetings are really public conferences with no restriction on attendance or any particular formality of procedure. They are usually conducted by a representative of the administrative agency of sufficient rank to answer questions with considerable authority on administrative policy, procedure, and interpretation.

Conference Procedure

The usual procedure in such conferences is for the presiding officer to go through the proposed regulations paragraph by paragraph, explain the purpose of each, and then permit questions and comments. Usually technical experts of the administrative agency are also present to take part in such discussions. Sometimes a verbatim transcript is made, and sometimes notes are taken only of important comments and suggestions. Usually a reasonable time is allowed after a conference for those who wish to submit more detailed comments and suggestions in writing.

In connection with administrative action on violations, most of the laws mentioned provide for a hearing or for opportunity for a hearing. For example, licenses issued under the Cotton Standards Act, the Grain Standards Act, and some others may be suspended or revoked after opportunity for a hearing; and provision is made for temporary suspension without a hearing.

The Federal Seed Act provides for three methods of enforcement: (1) Prosecution through the courts; (2) orders to cease and desist; and (3) seizure. Except for the Federal Seed Act and the Insecticide Act, when prosecution is used no administrative proceedings are necessary other than the investigation and preparation of evidence for submission to the Department of Justice. The Federal Seed Act goes somewhat further, however, and provides that before a violation is reported for prosecution the respondent shall be given appropriate notice and opportunity to present his views. This is an informal proceeding conducted by an administrative officer. Hearings are required in cease and desist order proceedings, which are more formal and are conducted by an examiner assigned by the Solicitor of the Department.

Prosecution is the only method of enforcement under the Insecticide Act, and notices in writing give the violator opportunity to be heard.

A number of unfair practices are specified as violations of the Perishable Agricultural Commodities Act, which provides for the filing of reparation and disciplinary complaints alleging violations by licensees, or those whose operations make them subject to the license provision, on which the Secretary is authorized to issue decisions, either with or without hearings. Hearings are required in all cases involving more than $500, unless waived by the parties to the complaint. Reparation complaints are filed by injured parties for damages occasioned by violations of the act and, unless awards of damages made by the Secretary are paid within the time specified in the order, or appeal is taken to the United States District Court, the license of the offender is automatically suspended by operation of law until payment is made. The Secretary is authorized to punish the offender by publishing the facts and/or suspending or revoking his license.

Packers and Stockyards Act

Under the Packers and Stockyards Act, cease and desist orders may be issued against packers after a hearing, and packers may be required to attend and testify. Reparation orders also may be issued after a hearing unless hearing is waived. Licenses of live poultry dealers may be suspended or revoked after a hearing, and applications for such licenses may be denied after any opportunity for a hearing. Registrations of market agencies and dealers may also be suspended after a hearing. Formal proceedings are conducted by an examiner assigned by the Solicitor, with an attorney also assigned by the Solicitor as counsel for the administrative agency.

In these proceedings, as in most proceedings under other acts, specific rules of practice developed by the Solicitor have been published for the guidance of all concerned. Briefly, these rules provide that the examiner shall prepare a report at the conclusion of the hearing and after the filing of briefs. Copies of the report are served upon the administrative agency and the respondent, opportunity being given for filing exceptions. After the exceptions have been considered, a draft of the proposed order is prepared and made available to both parties, who may present oral argument to the Secretary, or someone designated by him, and before the final order is issued. The rights of the respondents are further protected in that there is opportunity to appeal to the courts.

Under the Agricultural Marketing Agreements Acts a detailed procedure has been devised to protect the rights of the parties affected by marketing agreements and orders. All marketing agreements and orders are preceded by a hearing. The following steps, for example, are taken in the formulation of milk-marketing agreements and orders, or of amendments to milk orders:

1. Application from the industry requesting the War Food Administrator to hold a hearing.

2. Investigation of the merits of the application, instituted by the Director of the Office of Marketing Services.

3. Recommendation by the Director of the Office of Marketing Services to the War Food Administrator that a hearing be held.

4. Approval of a hearing, and the serving of notice by the War Food Administrator.

5. Holding of the public hearing.

6. Preparation and filing with the hearing clerk of a report by the Director of the Office of Marketing Services on the hearing, and of a proposed order or amendment.

7. Filing of exceptions to the Director's report.

8. Recommendation by the Director of a marketing agreement for tentative approval by the War Food Administrator.

9. Approval by the War Food Administrator of the agreement.

10. Holding of referendum among producers and submission of marketing agreement to handlers.

11. Approval by the President (Director of Economic Stabilization) if handlers of more than 50 percent of the volume of milk in the market refuse to sign the marketing agreement.

12. Issuance of final order or amendment by the War Food Administrator.

It is apparent from this brief description of a few of the laws administered by the Office of Marketing Services that their objective is to facilitate the marketing of farm commodities and to prevent abuses in the marketing process. Perhaps the main purpose of administrative agencies is to provide a means of preventing evils from developing, rather than of merely trying to correct them after they arise. Congress may declare a certain action to be a crime, and the declaration alone may be a sufficient deterrent--but often it is not. Or people may and do go into court and sue each other. That procedure is usually expensive and time-consuming, especially when long distances separate the parties; and results are uncertain. A more flexible method than either of these is required.

More than 2,000 complaints are received each year under the Perishable Agricultural Commodities Act. Less than 10 percent of these complaints get as far as a formal hearing. The advice of the administrative agency, based on decisions made in similar circumstances, disposes of the others and provides the protection sought

in the act. The administrators of such laws have an important responsibility. A policy of arbitrary and unreasonable administration can ruin a good law and cause it to fail in its purpose. On the other hand, a realistic policy based upon an understanding of the conditions under which business must be carried on can do wonders even with a weak law.

The marketing of farm commodities, in their natural and their processed forms, is a vast and complicated process in this country. Generally speaking, an efficient system of marketing has been developed, but there is and always will be room for improvement. Higher efficiency is as worth striving for in distribution as in production; and we may reasonably expect producers, distributors, and consumers all to insist on such additional help in marketing as the Federal Government can give them through the administration of regulatory and service laws.

* *
*